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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1444

THOMAS E. JOYCE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY TO THE ANSWER OF THE UNITED STATES

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The Government states the defendant was absent "during the last day of trial,". Actually the defendant was absent during the entire defenses of his co-defendants Burton

Sherre and Harry Wallace. Their defenses were not prolonged but were very damaging to this defendant. Defendants Sherre and Wallace each testified in his own defense. Thus petitioner's sudden and involuntary hospitalization at such a crucial time left him unable to rebut.

In its answer the Government cites four cases. Three cases were, without question, voluntary absences. The *Williams* case pertained to Respondent Williams, a nonbailed defendant, being tried in jail clothes. However, in said case, the Supreme Court stated:

> "We held in *Chapman* v. *California* that 'before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt.'"

It may be noted that Judge McLaren in his written opinion and court statements mentioned his inexperience and were he to try the case again he would have handled it differently. It was his first trial and he was not a well man. He is now deceased.

The Government's citation, *Kaufman* v. *United States*, 394 U.S. 217, 227, n. 8, is a case that needs to be read in its entirety. Actually the statements therein favor this petitioner. On page 228 it says:

> "Plainly the interest in finality is the same with regard to both federal and state prisoners. With regard to both, Congress has determined that the full protection of their constitutional rights requires the availability of a mechanism for co'lateral attack. The right then is not merely to a federal forum but to a full and fair consideration of constitutional claims."

Also on page 224 the *Kaufman* case says:

> "For unlike a claim of denial of effective counsel or violation of the privilege against self-incrimination, as

> examples, a claim of illegal search and seizure does not impugn the integrity of the fact-finding process"

Now we come to the matter of "seasoned counsel." The Court of Appeals in the decision I appeal from said "seasoned counsel." The United States Supreme Court has stated "effective counsel." This petitioner was entitled to effective counsel. The tricky manner in which attorney Echeles acquired this petitioner's signature, per se, signifies ineffective counsel. Although Echeles had a telephone discussion with petitioner's doctor the morning prior to acquiring the signature, he did not get the doctor's permission to visit or see this petitioner. He had no witness to the signature, no other person present at the signing, and no knowledge by or permission from petitioner's wife. Further, Echeles did not get petitioner's signature or his permission to sign the second waiver. (Actually, by then petitioner was recovering and would not have signed it.) Petitioner was under such pain and sedatives, it is obvious his signature was obtained in a manner inconsistent with his having full and proper knowledge.

Contrary to the claim of the Government it may be noted that the questions raised before the courts in the #2255 petition could not have been raised in the earlier appeal from the trial because only matters actually covered at the trial could be covered in that appeal. While the case was on appeal Judge McLaren would not take jurisdiction of a #2255 petition anymore than the Court of Appeals would take cognizance of the affidavit of petitioner's wife.

Petitioner was entitled to protection of his constitutional right to be present during the entire trial, and in particular during the testimony of his codefendants. His counsel was,

per se, ineffective. The court and the Government could easily have verified and should have verified petitioner's physical condition before they approved the waiver.

Wherefore, this petitioner again respectfully prays the court to issue its writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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